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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*[Propriety of Air Force Making Payment on a Voucher for a Survivor
Benefit Plan Annuity]*

FILE: B-192470

DATE: January 3, 1979

MATTER OF: Chief Master Sergeant Allen J. Gallagher, USAF
(Retired) (Deceased)

- DIGEST: 1. A retired service member, having elected coverage under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, as amended, and thereafter retired from the Civil Service, waived receipt of his military retired pay for Civil Service retirement purposes and did not decline survivor coverage under the Civil Service Retirement system. Under 10 U.S.C. 1452(e), SBP coverage charges are suspended so long as that waiver is in effect.
2. If a retired service member has elected SBP coverage and has waived receipt of military retired pay for Civil Service retirement purposes and does not decline survivor coverage under that latter system and dies while the waiver of military retired pay is in effect, under the provisions of 10 U.S.C. 1450(d), no SBP annuity becomes due and payable to his survivors.

This action is in response to a letter dated June 28, 1978, with enclosures, from Mr. Ernest E. Heuer, Deputy Chief, Accounting and Finance Division, Headquarters Air Force Accounting and Finance Center, requesting an advance decision on the propriety of making payment on a voucher in favor of Mary A. Gallagher, custodian for Peggy A. Gallagher, a minor, in the amount of \$583.35. The proposed payment is for a Survivor Benefit Plan (SBP) annuity for the period April 24 through June 30, 1978, for the surviving dependent child of the late Chief Master Sergeant Allen J. Gallagher, USAF, Retired, 477-14-7187. The request has been assigned Air Force Submission No. DO-AF-1300 by the Department of Defense Military Pay and Allowance Committee.

The member retired from the United States Air Force effective August 1, 1965, and elected coverage under the Retired Serviceman's Family Protection Plan. Thereafter, he was employed by the Federal Government in a civilian capacity. On May 21, 1973, he elected supplemental coverage under the SBP for his children only. On January 21, 1978, the member, preparatory to

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retiring from the Civil Service, waived receipt of military retired pay for the purpose of using his years of military service to increase his Civil Service annuity. Additionally, he elected a survivor annuity under the Civil Service retirement system. The member died April 23, 1978. For survivor annuity purposes, he was survived by his spouse, Mary, and one dependent child, Peggy.

The question presented is whether the language of 10 U.S.C. 1450(d) and 1452(e), is intended to bar payment of an SBP annuity only to a spouse under these circumstances or whether it applies to both spouse and children.

Subsection 1450(d) of title 10, United States Code, provides:

"(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired or retainer pay for purposes of subsection III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(i) of title 5, he notified the Civil Service Commission that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

And subsection 1452(e) provides:

"(e) When a person who has elected to participate in the Plan waives his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, he shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(i) of title 5, he has notified the Civil Service Commission that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of title 5."

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In Report No. 92-1089, Committee on Armed Services, United States Senate, dated September 6, 1972, on pages 23-24, it is stated with respect to the purpose of the foregoing that:

"* * * It would permit a retiree, who waives his military retired pay in order to combine his military service and civil service retirement credits for purposes of calculating and receiving civil service retired pay, to retain coverage under the new Plan or to participate in the civil service survivorship plan but not both. If he participated in the civil service survivorship plan, contributions would be waived under the new Plan. * * * It would also be both fair to the government (duplicate benefits based on the same period of Federal service would not be paid) and to the individual (duplicate contributions would not be required). At the same time, it would not be possible for a retiree, who is a member of the new Plan, to avoid participation in a Federal survivorship plan; he would be required to have continuous participation either in the new Plan or the civil service plan."

And on page 26, thereof:

"The committee agrees that duplication of benefits should be precluded; however, it further believes that duplication of contributions should also be precluded. * * * When a military retiree waives his military retired pay to increase civil service retirement benefits and elects to join the civil service retirees survivor benefit plan, he would cease to contribute to the military plan during the time his waiver is in effect. * * *"

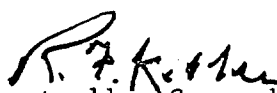
While the provisions of 10 U.S.C. 1450(d) and 1452(e) specifically address spouse coverage, the effect of those sections is to require the retiree to choose between survivor protection under the Civil Service Retirement system or under SBP. No provision is made for the retention of previously selected child only coverage under the SBP

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when the retiree has survivor protection under Civil Service Retirement. The law involved does not provide for payment by the retiree for such coverage and the history of that law shows that duplicate coverage was not to be permitted.

In the present case, it appears that at the time the member retired from the Civil Service he had survivor annuity coverage under that system, not having previously declined such coverage. Since he had a waiver of military retired pay in effect for Civil Service retirement purposes on the date of his death, it is our view that no SBP annuity is payable to his surviving child.

Accordingly, since no payment is due in the case, the voucher accompanying the submission will be retained here.


Deputy Comptroller General
of the United States